IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28..11..2007

Coram:

The Hon'ble Mr. Justice K.CHANDRU

W.P. Nos.27647 and 27847 of 2007
and
M.P. Nos. 1 and 2 of 2007 in W.P. No. 27647 of 2007
and
M.P. No. 1 of 2007 in W.P. No. 27847 of 2007

K.Nehru .. Petitioner in both W.Ps.

vs.

1. The Government of Tamil Nadu
Rep. by Secretary to Government
Labour and Employment Department
Fort St. George
Chennai - 9

2. The Management of
Tamil Nadu Pollution Control Board
Rep. by its Member Secretary
No. 76 Anna Salai
Guindy, Chennai .. Respondents in both W.Ps.

Petitions filed under Article 226 of the Constitution of India seeking for issuance of writ of Mandamus directing the second respondent to appoint the petitioner to the post of Assistant Engineer in the second respondent Board on the basis of the written test written by him on 11.3.2007 and for a declaration declaring the selection of Assistant Engineers made by the second respondent on the basis of the interview held on 27.7.2007 by calling for candidates from the Employment Exchange in the ratio of 1:1 superceding the written test held on 11.3.2007 as violative of Articles 14 and 16 of the Constitution of India.

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For Petitioner : Mr. S. Ayyathurai

For Respondent 1 : Mrs.Bhavani Subbarayan, AGP

For Respondent 2 : Mr. Ramanlal

C O M M O N O R D E R

The petitioner in both the writ petitions is the same person and in view of the inter-connectivity of both the writ petitions,

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they are taken up together.

2. I have heard the arguments of Mr. S. Ayyathurai, learned counsel appearing for the petitioner, Mrs.Bhavani Subbarayan, learned Assistant Government Pleader representing the first respondent and Mr. Ramanlal, learned counsel appearing for the second respondent and have perused the records.

3. W.P. No. 27647 of 2007 has been filed seeking for a direction to the second respondent to appoint the petitioner in the post of Assistant Engineer on the basis of the written test held on 11.3.2007. W.P. No. 27847 of 2007 is filed seeking for a declaration declaring the selection of Assistant Engineer in the second respondent Tamil Nadu Pollution Control Board [for short, 'Board'] on the basis of the interview held on 27.7.2007 by calling for candidates from the Employment Exchange in the ratio of 1:1 by superseding the written test held on 11.3.2007, as violative of Articles 14 and 16 of the Constitution of India.

4. The petitioner was an applicant for the post of Assistant Engineer called for by the second respondent and the applicants were directed to take a written test at the College of Anna University on 11.3.2007. The petitioner's Registration No. was B53 and he, accordingly, wrote the test on 11.3.2007.

5. The second respondent has filed a common counter affidavit dated 24.9.2007 wherein it is stated that when the Board decided to recruit 25 Assistant Engineers, a requisition was made to the Assistant Director / Professional Employment Exchange to send a list of eligible candidates as per the roster. The Employment Exchange had sent a list of 501 candidates and intimation was sent to all of them and 256 candidates attended the examination on 11.3.2007. The selection was to be based on the written test as well as oral interview to be held later. Before the second respondent Board call the candidates for interview, the first respondent had issued G.O. Ms. No. 86 Labour and Employment Department dated 12.5.2007 by which a revised procedure for recruitment has been made by the Government. In terms of the said order, the employers were directed to invite candidates only on the ratio of 1:1 rather than the pre-existing ratio of 1:20. The second respondent Board adopted the Government Order since the category of Assistant Engineer did not fall under either physical or technical skill parameters. Therefore, a fresh requisition was called for from the Employment Exchange. Accordingly, the Assistant Director of Employment Exchange had sent a fresh list of candidates by keeping in mind the seniority and registration as well as communal roster. It was based upon the new list, selection was conducted. Since the petitioner's name had not come for consideration, the question of considering his name did not arise and he had registered his name in the Employment Exchange under the category 'Scheduled Caste Community' (non-priority) only on

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18.7.1989 as he had acquired B.E. Degree in Civil Engineering only during April 1989. It was also stated by them that there was no ulterior motive for the Board to call for fresh list. The Government had reiterated by their letter dated 26.4.2007 that the guidelines issued in the earlier order dated 30.3.2007 should be strictly followed in cases where the appointment order had not been issued. In the present case, the petitioner had only written the written test and was waiting for the interview. Therefore, the selection process was not complete.

6. Mr. S. Ayyathurai, learned counsel for the petitioner submitted that it cannot be said that the order in G.O. Ms. No. 65 Labour and Employment Department dated 30.3.2007 is binding on the second respondent, which is an autonomous Board, and even otherwise, the clarification issued by G.O. Ms. No.86 Labour and Employment Department dated 12.5.2007 does not prohibit the Board from going ahead with the earlier selection method. In this context, he referred to paragraph 2 of the impugned G.O. Ms. No. 86 dated 12.5.2007 and the essence of the clarification is as follows:

> "If already vacancies were notified with the Employment Exchange and list has been received before 30.3.2007, then in order to avoid delay in filling up the vacancy, the Establishment can continue with the earlier list and not to follow G.O. Ms. No. 65 Labour and Employment Department dated 30.3.2007. In all other respects, G.O. Ms. No. 65 prescribing the ratio of 1:1 shall be scrupulously followed by the Employment Exchange. But, whenever any post requires physical skill or technical skill parameters, in respect of those posts, the ratio of 1:1 cannot be followed. Then the establishments can go by the requisition made as it is prevalent before G.O. Ms. No. 65 dated 30.3.2007."

It is only because the learned counsel found this clarification was against him, he has chosen to file the second writ petition, viz., W.P. No. 24847 of 2007 challenging the vires of the said order as being allegedly violative of Articles 14 and 16 of the Constitution of India.

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7. In the present case, the respondents have taken a categorical stand that the original selection process had not gone through since interview was not conducted and when the revised Government Order was considered by the Board as to have been mandatorily followed by them, there was nothing wrong in the Board adopting the said Government Order and make a requisition for a new list in terms of the revised Government Order. No right of the petitioner is affected and the Board has rightly considered that the post of Assistant Engineer is only an entry level post and it

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does not require any physical skill or technical parameter. It is also significant to note that the petitioner himself has got his name registered in the Employment Exchange only during April 1989. He wants to compete with the people who are in queue even earlier to him. Since the petitioner has not been given any offer of employment, his attitude to seek for the direction to post him as an Assistant Engineer in terms of the written test held on 11.3.2007 as claimed in W.P. No. 27647 of 2007 is misconceived and accordingly, it is dismissed.

8. With reference to the challenge to G.O. Ms. No. 86 dated 12.5.2007, the said order is of a general nature applicable to all Government Departments including statutory Boards and there was no illegality or unconstitutionality about the said direction. In fact, it is a demand of the various service organisations that the ratio of 1:20 gives scope for manipulation by the recruiting authorities. Therefore, the zone of consideration should be kept low so that the scope for manipulation may not arise. In fact, the ratio was prescribed by G.O. Ms. No. 65 Labour and Employment Department dated 30.3.2007 and that is not under change in this writ petition.

9. The petitioner is not seeking to challenge even the clarification dated 12.5.2007. But, on the contrary, he seeks for a general declaration to declare the selection of Assistant Engineer on the basis of the interview held on 27.7.2007 as unconstitutional. The Board is bound to go by the Government guidelines in the matter of recruitment and prescription of ratio as 1:1 cannot be held to be either illegal or unconstitutional. The further order dated 12.5.2007 in G.O. Ms. No. 86 is only a clarification so that the employer can take a definite stand on the application. In the present case, the second respondent Board has taken a definite stand to go by 1:1 ratio in the matter of recruitment for the post of Assistant Engineer and the same cannot be found faulted by this Court. The petitioner's only assertion that he has taken a written test cannot be a ground to hold that the Government Order is invalid and the selection process adopted by the second respondent is violative of Articles 14 and 16 of the Constitution of India. Therefore, W.P. No. 24847 of 2007 also fails.

10. In view of the above, W.P. No. 27647 of 2007 is misconceived and accordingly, it is dismissed. No costs. The direction made by this Court vide order dated 18.8.2007 to keep one post of Assistant Engineer vacant, shall stand vacated. Connected Miscellaneous Petitions are closed.

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11. W.P. No. 24847 of 2007 also fails and the same shall stand dismissed. However, there will be no order as to costs. Connected Miscellaneous Petition is closed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Secretary to Government
Government of Tamil Nadu
Labour and Employment Department
Fort St. George
Chennai - 9

2. The Member Secretary
Tamil Nadu Pollution Control Board
No. 76 Anna Salai
Guindy, Chennai

+2ccs to Mr.S.Ayyathurai, Advocate Sr 70238 and 70237

KS (CO)
km/3.12.

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